

1 The Honorable Barbara J. Rothstein
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES MEDICRAFT, *et al.*,

Plaintiffs,

v.

STATE OF WASHINGTON, *et al.*,

Defendants.

NO. 21-cv-1263

**ORDER RE SECOND PRETRIAL
CONFERENCE RULINGS**

The Court held a second pretrial conference on the record with counsel on August 1, 2024.

The following rulings were issued, for the reasons as stated on the record:

I. DEFENDANTS' RENEWED MOTION IN LIMINE

Defendants renewed their motion in limine to exclude testimony by AM, and any other witnesses' testimony in support of AM's claims beyond the scope of his deposition testimony. ECF No. 368. The Court deferred ruling on this issue at the first Pretrial Conference to allow the parties time to confer and determine if the issue was moot. The Court ruled as follows:

Plaintiffs' counsel will advise Defendants' counsel by end of business on Friday, August 2, 2024 whether or not Plaintiffs' will call AM to testify. If Plaintiffs intend to have AM testify, Defendants may take AM's deposition either by Zoom or in-person in South Carolina. The Court does not limit the time allowed but encourages Defendants' counsel to use restraint in consideration

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1 of AM's age and attention issues, and the parties should be prepared to take breaks as needed to
2 facilitate a meaningful deposition. Should AM not cooperate, he will not be allowed to testify.

3 **II. ISSUES IDENTIFIED FOR PRETRIAL RESOLUTION**

4 **A. Motion to Certify Questions, ECF No. 362, is denied in part**

5 The Court will not certify questions to the Washington Supreme Court. The Court defers
6 ruling on the posed questions pending a response by surreply from Defendants' and Tender
7 Counsel. The surreplies are due no later than Friday, August 9, 2024.

8 **B. Defendants' and Tender Counsel may both Examine Witnesses**

9 Defendants' and Tender counsel may both examine and cross-examine witnesses at trial.
10 They shall agree between themselves who will take lead on each witness, and the second attorney
11 may not repeat any question on follow-up.

12 **C. Injunctive Relief is a Post-Trial Motion**

13 Plaintiffs were not able to advise the Court if they plan to pursue claims for equitable
14 injunctive relief. The Court advised that injunctive relief will be decided, if needed, by the Court
15 post-trial.

16 **III. TRIAL READINESS**

17 **A. Witness and Exhibit Lists**

18 Witness and exhibit lists and objections are not realistic, and objections must be spelled out
19 rather than with general references to a rule number.

20 The parties are reminded that all exhibits must be premarked and preadmitted prior to trial.
21 Only ones used during the trial will go to the jury. A follow-up pretrial conference to deal with
22 exhibits will be held on Monday, August 19, 2024 at 9:00 a.m. PST in person.

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1 The parties shall provide revised lists of witnesses and exhibits by August 12, 2024. Every
2 objected-to exhibit must be provided to the Court before the follow-up hearing so the Court can
3 review the exhibit and the objections thereto. The parties shall contact the Courtroom Deputy for
4 instructions on providing these exhibits to the Court. Objected-to exhibits must be provided
5 digitally no later than 1:00 p.m. PST on Monday, August 12, 2024, and a paper copy sent by courier
6 to arrive in chambers no later than 10:00 a.m. EST on Tuesday, August 13, 2024.

7 Defendants' and Tender Counsel will work together to provide a joint witness and exhibit
8 list.

9 **B. Neutral Statement of the Case**

10 The Court's proposed neutral statement of the case, with slight modification, will be used
11 to read to prospective jurors as part of the voir dire. The Court will incorporate the parties' agreed
12 voir dire questions and distribute the proposed voir dire questionnaire to the parties.

13 **IV. PLAINTIFFS' MOTION FOR CERTIFICATION OF FINALITY**

14 On July 31, 2024, Plaintiffs filed a motion for certificate of finality, ECF No. 405. The
15 parties agreed to expedite briefing. Accordingly, Defendants' response in opposition shall be filed
16 on or before August 15, 2024, and Plaintiffs' reply shall be filed on or before August 20, 2024.

18 DATED this 2nd day of August 2024.

20 
21 Barbara Jacobs Rothstein
U.S. District Court Judge

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